UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/51/657
6 November 1996

ORIGINAL: ENGLISH

Fifty-first session
Agenda item 110 (c)

HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Situation of human rights in Rwanda

Note by the Secretary-General

In accordance with Commission on Human Rights resolution S-3/1 of 25 May 1994, endorsed by the Economic and Social Council at its 8th plenary meeting, on 6 June 1994, the Secretary-General has the honour to transmit to the members of the General Assembly the report which the Special Rapporteur on the situation of human rights in Rwanda, Mr. René Degni-Ségui, has prepared since the fiftieth session of the General Assembly.

96-30732 (E) 081196 111196

Report on the situation of human rights in Rwanda submitted by Mr. René Degni-Ségui, Special Rapporteur of the Commission on Human Rights, under paragraph 20 of Commission resolution S-3/1 of 25 May 1994*

[Original: French]

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* Previously circulated under the symbol E/CN.4/1996/68.

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Introduction

1. Since his last report was published (E/CN.4/1996/7, of 28 June 1995), the Special Rapporteur has visited Rwanda twice: the first time to investigate the situation created by the expulsion of Rwandan refugees from the camps located in Zaire (from 24 to 28 August 1995); the second time to familiarize himself with recent developments in the country's human rights situation (from 4 to 9 December 1995), with a view to updating his report for the Commission on Human Rights at its fifty-second session.

2. During his first visit, the Special Rapporteur met the following prominent persons:

(a) Prominent persons (Rwandan)

Mr. Seth Sendashonga, then Minister of the Interior and Community Development; Mr. Alphonse-Marie Nkubito, then Minister of Justice; Dr. Jacques Bihozagara, then Minister of Rehabilitation and Social Integration, now Minister for Youth and Associations; the Military Commander of the Rwandan Patriotic Army (APR) in the region of Cyangugu; representatives of national human rights organizations.

(b) Prominent persons (non-Rwandan)

Mr. Shaharyar Khan, Special Representative of the Secretary-General in Rwanda; the Resident Representative of the United Nations Development Programme (UNDP) in Rwanda; the force commander of the United Nations Assistance Mission to Rwanda (UNAMIR) for the Cyangugu sector; the chief of the delegation of the International Committee of the Red Cross (ICRC) in Kigali; the delegates of the Office of the United Nations High Commissioner for Refugees (UNHCR) in the Gisenyi region; the delegate of the League of the Rights of the Individual in the Great Lakes region and the International Human Rights Law Group; the representatives of the non-governmental organization "International Rescue Committee" of the Cyangugu region.

The Special Rapporteur also went to Gisenyi and Cyangugu in order to witness personally the progress of reception operations for Rwandan refugees expelled from Zaire.

3. During his second visit, the Special Rapporteur met the following prominent persons:

(a) Prominent persons (Rwandan)

Mr. Alexis Kanyarengwe, Deputy Prime Minister and Minister of the Interior and Community Development; Mr. Jean Mutsinzi, First President of the Supreme Court of Justice; and the Director-General of the Ministry of Justice.

(b) Prominent persons (non-Rwandan)

Mr. Shaharyar Khan, Special Representative of the Secretary-General in Rwanda; Archbishop Juliusz Janusz and Mgr. Nguyên Van Tôt, Apostolic Nuncio and former Chargé d'affaires of the Apostolic Nuncio in Rwanda, respectively;

Mr. Cissé, Deputy Resident Representative of UNDP in Rwanda; Judge Honoré Rakotomanana, Deputy Prosecutor of the International Tribunal for Rwanda.

During his most recent visit to Rwanda, the Special Rapporteur also had working meetings with Mr. Ian Martin, the new head of the Human Rights Field Operation in Rwanda, with observers from the monitoring and technical cooperation units and with the Kigali, Butaré and Gitarama teams. He also visited the prisons at Nsinda and Gitarama and the University of Butaré, where he spoke to the Dean of the Faculty of Law.

4. The Special Rapporteur would like to express his sincere thanks to all the prominent persons who supported him in the preparation and conduct of his two missions. He is particularly grateful to the Special Representative of the Secretary-General in Rwanda and to all the personnel of the United Nations Human Rights Field Operation in Rwanda for their assistance, logistical support and cooperation.

5. The conversations he held and the visits he made in the field enabled the Special Rapporteur to assess the progress of the inquiry into the genocide, current human rights violations and the return of the refugees.

I. GENOCIDE

6. Genocide and other crimes against humanity continue to be basic concerns of the international community. This report therefore stresses their investigation and the difficulties attendant on proceedings against the presumed perpetrators of the crimes against humanity which have been committed since 6 April 1994.

A. Inquiry into the genocide

7. The inquiry into the genocide and the other gross and flagrant violations of human rights has made very definite progress, and has revealed new evidence confirming the commission of crimes against humanity. It is therefore necessary that it should not be restricted to the situation of human rights in general but extend to the situation of the rights of vulnerable groups. The general situation will therefore be distinguished here from the specific cases.

1. General situation

8. The inquiry into the general situation of human rights does not require particular elaboration, inasmuch as it confirms the various facts set out in the earlier reports. It is sufficient to note that the human rights observers are continuing to collect information on the genocide and other crimes against humanity. New sites of massacres and mass graves were identified in October, in the prefectures of Cyangugu (more particularly in the communes of Gisuma and Gafunzo) and Kibuye. In the last-mentioned case, a mass grave was discovered in a natural cave more than 10 metres deep, in the commune of Gishita. The observers also obtained some evidence from the survivors, who made a point of giving the names of the victims and their murderers.

9. Other mass grave sites were identified in Cyangugu prefecture by the delegates of the project "Memorial for the victims of the war and the genocide". This project was initiated by the Ministry of Rehabilitation and Social Integration and has particular responsibility for identifying the sites of massacres. The inquiry is being conducted in collaboration with the Human Rights Field Operation in Rwanda.

10. The International Tribunal has also deployed throughout the territory of Rwanda 30 or 40 professional investigators who operate methodically prefecture by prefecture. The results of their investigations, supplemented by the testimony of witnesses, evidence and documents made available to the International Tribunal, will effectively enable the Tribunal to take up its duties. This has already been done, to judge by the first indictments proffered by the International Tribunal on 12 December 1995.

2. Special situations

11. These refer to the fate of certain vulnerable groups during the April 1994 hostilities, particularly the massacres. It should be mentioned in passing that the extension of the inquiry to the special cases is simply in response to the urgent requests addressed to the Special Rapporteur by certain international bodies such as the Committee on the Rights of the Child, UNICEF and the United Nations Population Fund. The vulnerable groups in question are women, children and the Twas, respectively.

(a) Women

12. It is true that a number of women took part in the genocide and other crimes against humanity. Most, however, were rather the victims. They may even be regarded as the main victims of the massacres, with good reason, since they were raped and massacred and subjected to other brutalities.

(i) The massacres

13. The perpetration of the genocide and other crimes took on special connotations when women were the victims. The massacres took place according to the following scenario: the husbands and male children were killed first, for the most part in front of their spouses and mothers; then it was the turn of the latter, often after having been tortured and raped. The perpetrators of these massacres were as a rule members of the interahamwe militias ("those who attack together") and bandits accompanied by soldiers of the former government. The executioners massacred their victims with no distinction between men and women, nor, as regards the latter, between little girls, young girls, adults and old women. All that mattered was their ethnic origin or their connection with the ethnic group the attackers were targeting. While Tutsi women were particularly targeted, Hutu women were equally punished for having married Tutsis and having had Tutsi children.

14. The women targeted were all the more vulnerable because they did not have any safe place of refuge. Like the men, they were hunted to their last retreats (churches, hospitals, schools, etc.). More than the men, far from benefiting from the protection of their family or their spouse's family when they took refuge with them, they were exposed to the danger of being massacred

by the family. This was the mistake made by Tutsi women married to Hutus or Hutus married to Tutsis, who were caught in this trap. One of the most typical examples was that of Matura commune where a Tutsi woman, married to a moderate Hutu from Kigali, learned that her husband had been murdered decided to take refuge in the house of her father-in-law; she managed to slip through the interahamwe net and make her way there. But her brothers-in-law considered that she was not one of the family and killed her. Furthermore, some Hutu men were forced to kill their wives with their own hands.

15. As in the case of all the victims of the genocide, it will probably never be known exactly how many women were killed nor how many were raped.

(ii) Rape

16. Rape was systematic and was used as a "weapon" by the perpetrators of the massacres. This can be estimated from the number and nature of the victims as well as from the forms of rape. According to consistent and reliable testimony, a great many women were raped; rape was the rule and its absence the exception. Unfortunately, there are no statistics to give, if not an accurate idea of numbers, at least an approximate one. The Ministry for the Family and the Promotion of Women recorded 15,700 cases of women raped during the hostilities. This official figure certainly underestimates the true situation for three reasons. The first stems from the fact that it is limited in space and time, since it only covers the period of the mass acres in Rwanda. It does not take account of rape which took place after the hostilities in the refugee camps outside the country, particularly of women carried off to the camps as "loot" and handed over to their tormentors. The second is the result of the reluctance of some women, particularly young girls, to confess or admit that they were raped. The specialists (doctors and psychologists) add a third reason to the foregoing, with reference to the number of pregnancies, which would seem to be between 2,000 and 5,000. According to the statistics, one hundred cases of rape give rise to one pregnancy. If this principle is applied to the lowest figure, it gives at least 250,000 cases of rape and the highest figure would give 500,000, although this figure also seems excessive. However, the important aspect is not so much the number as the principle and the types of rape.

17. The nature of the persons targeted also testifies to the systematic nature of the rapes. No account was taken of the person's age or condition. The 15,700 cases of rape recorded by the Ministry of the Family included women aged between 13 and 65. Under-age children and elderly women were not spared. Other testimonies mention cases of girls aged between 10 and 12. Pregnant women were not spared either. Women about to give birth or who had just given birth were also the victims of rape in the hospitals. Their situation was all the more alarming in that they were raped by members of the militias some of whom were AIDS virus carriers (as was the case of the national chief of the militias, as several witnesses report). Women who had just given birth developed fulminating infections and died. Women who were "untouchable" according to custom (e.g. nuns) were also involved and even corpses, in the case of women who were raped just after being killed.

18. The forms of rape similarly testify to their systematic nature. Two may be noted: gang rape and incest. The former, perhaps less common than

individual incidents of rape, consisted in the victim being raped by several of her tormentors at one time. Many women who underwent this type of rape died as a result. The cases of incest are still more revealing of the systematic and abominable nature of the rape: direct relatives, or blood relatives, were forced to have incestuous intercourse. According to reliable testimony, militiamen forced fathers or sons to have sexual relations with their own daughters or mothers and vice versa. In addition to these atrocities the women were subjected to various brutalities which generally caused their death. Some were sexually humiliated: they were stripped and/or slashed and exposed to public mockery. Others had pieces of trees branches pushed into their vagina. Even more had their external genitals, their buttocks and their breasts cut off. These brutal atrocities cannot but have serious consequences for the survivors.

(iii) The results and other consequences

19. The results and other consequences of rape basically take the form of physical injury, psychological problems and the social exclusion of the victims.

20. The physical injuries and their consequences range from mere abrasions to instant death, and include infection with sexually transmissible diseases. Some women escaped with mere abrasions, while others are still suffering from more serious injuries which in a number of cases have affected their sexual organs so that it may not be possible for them to have children in the future. This is, alas, the fate of the little girls who were raped. More serious still is the fate of the victims who contracted sexually transmissible diseases and particularly AIDS. This is the result most to be feared because Rwanda is one of the countries with the highest rate of HIV-positive persons and because the militiamen carrying the virus used it as a "weapon", thus intending to cause delayed death. Instant death has resulted from several factors including gang rape, difficult and complicated pregnancies (women who conceived although their bodies were not able to carry a pregnancy to term), the cutting off of sexual organs and other atrocities.

21. Psychological problems have been what the victims of the massacres in general and of rape in particular have most commonly shared. They are the result of psychological traumas which affect even women who have only been eyewitnesses of the above-mentioned atrocities, but particularly those who experienced them personally. These traumas are all the more serious because they were caused by acts or deeds which African tradition generally regards as prohibited, and which constitute a veritable taboo. This makes the behaviour of the victims, observed and described by the agents of the Human Rights Field Operation all the more comprehensible. In their opinion, the victims questioned have adopted unusual and curious behaviour in which they show touchiness, irascibility and shame, and sometimes even a form of madness. For the most aware among them, their reticence or their taciturnity with regard to the taboo issue gives the impression that they want to flee their environment.

22. The major psychosis of the rape victims seems to be their social exclusion. This is particularly the case of girls who are afraid that they will no longer be able to find a husband. They therefore flee their hills and their own milieu for somewhere far away where they can live quietly and

anonymously. Those who have become pregnant and give birth are in an even more uncomfortable position, since African society in general and Rwandan society in particular is unwilling to accept unmarried mothers. Their situation is all the more delicate because conception has been the result of rape and/or incest; it is therefore difficult for them to accept their offspring, the fruit of their own womb.

23. These children, born as a result of rape, are that crime's innocent victims. At best, they can expect to be badly treated. The names given them, putting them in the same category as their fathers, are already revealing in this regard. They are called: "children of shame", "gifts of the enemy", "little interahamwe". These "little monsters" are more fortunate than the others who are sentenced to death before their cases are even opened. Many unmarried mothers have resorted either to abortion or to infanticide with or without the family's complicity. An investigation carried out in March 1995 by the Ministry for the Family and the Promotion of Women shows that, despite the law prohibiting abortion, a large number of victims of rape have sought medical help and in their despair have resorted to traditional means in order to end their pregnancy. A woman questioned at Butare said that in the medical centres which collected the survivors together, premises were made available to women victims of rape who were pregnant; she added that there was a long queue to use these premises. The same difficulties are encountered as regards material and psychological assistance to women victims of the genocide.

24. Among many other initiatives, UNICEF has set up income-generating activities by facilitating the granting of credit to groups of women (185 groups at Gitarama). It has also distributed food and has engaged in tracing and reuniting families and has supported post-trauma recovery programmes. Some local groups, with the help of the Government and of humanitarian organizations, have helped to provide psychological assistance to traumatized women, by setting up cell- and commune-based support groups. These groups give the women an opportunity to discuss their common problems and they have created an atmosphere of support among their members. However, the women questioned say that a year after the genocide a great many of their physical, socio-economic and psychological needs have not been correctly dealt with. They consider that the United Nations bodies and the NGOs have devoted most of their services to unaccompanied children and have tried to deal with women's psychological needs using methods developed elsewhere that do not take the specific aspects of Rwandan society into consideration.

(b) Children

25. Children have not been spared by the events which caused the serious human rights violations of April 1994 and particularly the massacres; they have been involved both as perpetrators and as victims.

(i) Children as perpetrators of massacres

26. During the hostilities, both sides made extensive use of children as instruments for committing crimes against humanity, either as civilians or as soldiers.

Child civilians

27. The massacres were a mass phenomenon; this was deliberate and was intended to involve all the strata of the population, including th. children, as killers "manipulated" by their handlers, often with the encouragement of their parents or members of the militias. Some received the same training as the militia members and behaved like them during the massacres; some, on the contrary, were urged on by adults (parents, neighbours and friends) to kill. This is why at the end of the hostilit.es many children were arrested and accused of taking part in the genocide. As of 9 December 1995, 1,711 children were under arrest; this figure accounts for nearly 2 per cent of the entire prison population, which is considerable. Apart from the numbers, something which inevitably gives rise to concern is the age of these children, varying from 17 to 10, or even 7 years of age; worse still, many of them have asserted that they do not regret what they did and are ready to do it again. The concern is all the greater in that their victims were other children; according to a UNICEF report, 47 per cent of the children questioned said that they saw other children killing or wounding youngsters. The same was the case among th= child soldiers.

Child soldiers

28. Even before the massacres of April-July 1994, many children had been recruited by the two parties to the conflict, the Rwandan Patriotic Army (APR) and the former wandese Armed Forces (FAR). The number of these child soldiers (kadogo) is impressive; it is estimated at approximately 4,820, of whom some 2,000 are in the APR and the rest members of the ex-FAR. Their ages are equally impressive and range from 5 in the case of the youngest to 17 for the oldest. Among the APR child soldiers, 1,500 are aged 10 to 12 and 500 are aged 13 to 17. Where the ex-FAR are concerned, the ages vary as follows: 187 between 5 and 10, 252 between 10 and 15 and 257 between 16 and 18 (based at Bukavu), in addition to 500 to 600 (aged 10 to 17, in the Goma camps).

29. There can be no doubt of the participation of child soldiers on both sides in the conflict in Rwanda. All participated actively to a greater or lesser extent in the killings and summary executions carried out since 6 April 1994. The ex-FAR child soldiers in particular took part in the genocide to a greater extent than the others, who rather undertook acts of reprisal, taking advantage of the fact that their own parents or relatives had been massacred during the genocide and the hostilities.

30. In order to deal with the traumas and the social consequences resulting from the participation of children in military activities - something in flagrant conflict with international rules, particularly those stemming from international humanitarian law and the United Nations Convention on the Rights of the Child of 20 November 1989 - UNICEF has undertaken various actions, in collaboration with UNHCR and other bodies. These include the project to demobilize and reintegrate into society Rwanda's child soldiers, including those of the former FAR. This is an appropriate context for the project initiated by the Ministry of Defence of Rwanda, with assistance from UNICEF, to demobilize and provide vocational training for the child soldiers of APR in the former non-commissioned officers' college in Butare. At the same time, a

similar action is taking place in the Rwandan refugee camps in Zaire, particularly in Goma. Certain non-governmental organizations, such as CARITAS, are associated with them.

31. Although many children took part in the massacres and other abominable crimes, most of them were rather the innocent victims, either as eyewitnesses or as targets of the massacres.

(ii) Child victims of massacres

Child eyewitnesses

32. Many Rwandan children who survived the hostilities, and in particular the massacres, witnessed the cruelties and atrocities perpetrated against men, women and other children. This dismal and terrible spectacle certainly affected and traumatized the children who were not targeted by the killings and all the more so those who were so targeted. The trauma experienced by the latter is aggravated by two tragic circumstances. The first is that they themselves only just managed to escape death by finding a chance hiding place. The second is that from this hiding place they were powerless witnesses of the torture and massacre of parents, relatives or friends. According to an investigation by the non-governmental organization "Emergency Project for Orphans' Care", 66 per cent of the children witnessed the violent death of their parents and that of other family members; 88 per cent of the children witnessed the killing of other known persons, carried out by armed militia members; 82 per cent of the children were threatened with weapons. Other bodies give even higher figures. According to the latest annual report of UNICEF, 87 per cent of children lost their parents while 96 per cent were the witnesses of massacres. Many more children, however, met the same fate as their parents.

Child victims of the massacres

33. As the Special Rapporteur stressed in his first report (E/CN.4/1995/7, of 28 June 1994, para. 28), the massacres spared neither children nor infants. Unfortunately, there are no figures for the number of children who were victims of the massacres. What is certain is that many of them died in appalling circumstances. Some babies had their throats cut and others were hurled against walls in the presence of their parents before the latter were themselves executed. Some children were even killed by their parents under threat from militia members. This happened in the case of many children born to mixed Hutu-Tutsi couples.

34. The luckiest children escaped with wounds, sometimes very serious and often to the head. The survivors often escaped only by hiding under the corpses of older persons or in the forests adjoining the sites of the massacres. After the massacres at Kibungo, a priest who survived the genocide informed the Special Rapporteur that a number of children had been found alive, although injured, under the heaps of bodies lying in the courtyard of the Bishop's Palace, where the executions took place.

35. According to the above-mentioned report of "Emergency Project for Orphans' Care", a total of 25 per cent of the children were beaten with

sticks, 26 per cent were wounded with firearms or cutting weapons, and 6 per cent are war-wounded, injured by the explosion of mines or by machetes (Dialogue No. 182, April 1995).

36. The children who escaped the massacres are in a state of trauma which is expressed in sadness, insomnia, nightmares, a permanent fear of being killed, mistrust of those around them and depression. The orphans and unaccompanied children are also faced with the crucial problem of who will provide for them. This problem is all the more acute because there are so many of them. On 31 December 1995, there were 47,000 individual children (orphans or unaccompanied children); 30,000 were in foster homes, 8,303 in 66 centres or orphanages. Children with no parents have been placed in orphanages; as for children separated from their parents, ICRC and other organizations are involved in searching for their families so that they may be reunited with them. However, many other families are obliged to take in these children. According to UNICEF, the family average which was 5.5 children before the massacres has increased to 7. It is particularly difficult for some families to bring up several children, and energetic measures are therefore needed to provide efficient assistance to the families and the organizations responsible for looking after these children, if necessary by giving them financial or material assistance.

(c) The Twas

37. Prior to the war, the Twas accounted for approximately 1 per cent of the population of Rwanda. Their role and their fate during the genocide are ambiguous. Some took part in the genocide while others were its victims.

(i) Twas as perpetrators of massacres

38. There is little information on the participation of the Twas in the massacres. The only sources found by human rights observers show that many of them were forced, in differing degrees, to take part in carrying out the genocide. Like many other Rwandese, some were forced to kill Tutsis in order to save their own lives. Others, similarly under constraint, performed the same task but as interahamwe militia members. The non-governmental organization United Nations and Peoples Organization (UNPO) records in a report dated 9 March 1995 that Twas were recruited into the militias for financial and security reasons. The commune of Masango (Gitarama prefecture) provides a typical example of the enrolment of Twas in the militias. The local chief of the militias, Mr. Mpamo, a founding member of the National Revolutionary Movement for Democracy and Development (MNRD), recruited many Twas at first as dancers and singers and then as militia members. It is reported that, even before April 1994, Twas were used by the militia members and soldiers of the former FAR to rape Bagogwe women during the massacres which took place between January and March 1992. However, like many other Rwandese, the Twas were not spared by the massacres.

(ii) Twas as the victims of massacres

39. During the hostilities the Twas were rather victims than perpetrators, particularly as they were simultaneously targeted by both parties to the conflict. Where the Rwandan Patriotic Front (FPR) was concerned, reliable

testimony showed that several hundreds of Twas were massacred. The above-mentioned report by UNPO specifies that APR soldiers attacked Twa villages a number of times, including the attack which took place in the Butare prefecture when it was taken by the APR in July 1994. On this occasion, the soldiers killed many Twas and Hutus while they were searching the houses looking for militia members. A Twa who survived reported that his wife, two of his children and eight other children perished as a result of this violence. Testimony from other Twas mentions other instances of massacres. There was the case of the execution by APR soldiers, at the end of June 1994, of a group of displaced Twas from Gitarama prefecture who were returning to seek food in their own village, and also the case of the massacre of 18 July 1994 on a hill in Gitarama prefecture; the APR soldiers invited the inhabitants of the hill to a meeting; numerous Twas were among the 500 persons invited; they were literally massacred.

40. Many persons testified that former FAR and militia members razed several villages and massacred thousands of Twas. UNPO mentions numerous cases of massacres, including the massacre of 7 April 1994 in the commune of Murambi (Byumba prefecture), where militia members killed Tutsis, moderate Hutus and Twas. The toll of the massacres was often very heavy. At the end of the hostilities, in the sector of Kanazi (Kanzenze commune, Kigali prefecture), only 30 Twas were left out of the 150 in the community prior to April 1994. Similarly, in the sector of Nyakayuga (Gituza commune, Byumba prefecture), the number of the survivors was 25 out of 600 Twas previously identified, or less than 3 per cent.

41. Whether the massacres of the Twas were the work of the FPR or of the former FAR, they do not seem to have been motivated by any intention of totally or partially destroying this ethnic group or of targeting it as such. The underlying reasons for the massacre are very diverse and consist essentially in reprisal for complicity or collusion with the enemy. Thus, for the instigators of the genocide, despite their historical and political affinities with the Tutsi royal courts and their support for the FPR, the Twas were merely the "accomplices of the main enemy". However, the inquiry is not finished and continues, with the aim of specifying the role and the fate of the Twas during the massacres of April to July 1994, the perpetrators of which are soon to face prosecution.

B. Problems of proceedings against the presumed perpetrators of the genocide

42. The delay in bringing proceedings against the presumed perpetrators of the genocide and other crimes against humanity is increasingly becoming a matter of concern to international public opinion. This delay is also worrying the victims, who are clearly not concealing their impatience. In view of the danger created by this situation, it is important to act quickly to find an appropriate solution. Certain steps have been taken, however, and in any case the problem takes on different expressions depending on whether the courts are the Rwandan courts or the International Tribunal.

1. Proceedings before the Rwandan courts

43. Despite some progress made in setting up judicial structures, Rwanda's courts and tribunals are not yet in a position to begin the genocide trials, since they are confronted with a number of obstacles.

(a) Progress achieved

44. With the appointment and partial installation of the magistrates of the Supreme Court of Justice, the "rehabilitation" of the Rwandan legal system is beginning to take shape. Progress has also been made as regards the training of court personnel. This has benefited the magistrates referred to as "lay magistrates", most of whom will be employed in the district courts but some of whom may be called on to assist the magistrates in the courts of first instance. The training has been achieved thanks to aid from the international community, particularly the non-governmental organization "Réseau des citoyens", with the support of Switzerland and Belgium. By 25 November 1995, 110 "lay magistrates" had completed their training. In theory, an additional group of further 100 should join them on 25 January 1996.

45. The Human Rights Field Operation in Rwanda has set up continuing training programmes for "lay magistrates" and inspectors of the judicial police. These programmes include, in particular, seminars on arrest and detention procedures, techniques for the investigation cases and respect for the rights of detainees and victims. A medium-term training programme on the rights of communities and techniques of evidence has also been initiated. The long-term programme will involve the retraining of Rwandan judicial personnel. Despite these efforts, it must be stressed that the legal system is still far from meeting the expectations of the parties to proceedings and of the victims, while obstacles still stand in the way of its "rehabilitation".

(b) Obstacles encountered

46. The obstacles which prevent or at least delay the "rehabilitation" of the Rwandan legal system and thus the trying of the presumed perpetrators of the genocide are of three types: institutional, human and material.

(i) Institutional obstacles

47. The first obstacle to the restoration of the legal system in Rwanda is constituted by the absence of certain bodies which are essential to its organization and operation. First among these is the Supreme Council of Justice (SCJ) which should be composed of representatives of all levels of courts instituted by the code of judicial organization, from the district courts to the Supreme Court of Justice. Some of these jurisdictions, like the Supreme Court and the courts of appeal, have not yet been fully constituted and thus cannot be represented in the SCJ. Moreover, the authority to appoint the judges comprising the various courts devolves on the SCJ. Since it has not yet been constituted it cannot carry out these appointments. This gives rise to a vicious circle and it is to break this that the Rwandan Government has submitted to the National Assembly a bill to amend the Constitution regarding the formalities for setting up the SCJ.

48. As of 10 December 1995, the Rwandan courts and tribunals were in the following State of operations: (a) of 147 district courts, less than 50 were functioning; (b) of 12 first instance courts, only half were operational (Byumba, Butaré, Gikongoro, Cyangugu, Kigali and Gitarama); (c) none of the four courts of appeal is currently in operation. It is thus apparent that none of the courts which are competent to hear genocide cases are functioning. It is in this context that the recommendation adopted by the Kigali Conference on Genocide and Impunity (1 to 5 November 1995), to establish specialized judicial machinery to judge the genocide, must be situated. The Conference envisages two solutions; the first concerns the establishment of a special independent court but encounters the opposition of those who believe that the creation of such a specialized body would lead to a form of special justice paralleling ordinary justice. This dualist system of justice is also liable to stretch the meagre resources available. The second solution, if the first is not adopted, proposes the institution within existing courts of specialized chambers competent to hear genocide cases. The opponents of this system argue that it is likely to be inefficient by being incorporated into the ordinary legal system. These two proposals have been submitted to the Government of Rwanda for its decision.

(ii) Human obstacles

49. The existence of structures or jurisdictional courts is not sufficient by itself; there is also a need for competent staff to operate them. In his earlier reports, including the report of 28 June 1995 (E/CN.4/1996/7), the Special Rapporteur had occasion to criticize the lack of human resources, which he considered to be one of the major obstacles to the entry into operation of the Rwandan courts. The judicial personnel situation has not so far shown any real progress. By the end of October 1995, the Ministry of Justice did indeed have 387 judges, 110 registrars, 20 government law officers and 312 judicial police inspectors; but these figures remain far below the requirements for judicial personnel, estimated by the Human Rights Field Operation in Rwanda - and only for "start-up" purposes - at 664 magistrates, 330 registrars, 163 government law officers and 312 judicial police inspectors.

50. As can be seen, although the judicial police inspectors are for the time relatively numerous, this is not the case for the other categories of personnel, particularly the magistrates among whom are many "lay magistrates". Out of the 387 judges, only 284 were in a position to practise by November 1995. These figures are ridiculously low compared with the 800 judges who practised before the genocide.

51. The foreign judicial personnel aid project, launched by the United Nations in the context of the Secretary-General's Trust Fund for Rwanda was not accepted by the Government of Rwanda for reasons relating to national sovereignty. The Government also considered that it would be of greater benefit to Rwanda if the funds available could serve to strengthen national jurisdictions, in particular by recruiting Rwandese lawyers, who today, because of the modest salaries paid, have little incentive to offer their services as magistrates; these funds would thus, according to the authorities, allow them to be given bonuses. Following negotiations between the Government of Rwanda and UNDP, a compromise was finally reached to earmark 60 per cent of

the US$ 1,800,000 (intended for the "rehabilitation" of the legal system phase II) for the support of local judicial personnel, and use the remainder to recruit foreign jurists as consultant-experts of the Ministry of Justice.

(iii) Material obstacles

52. The material obstacles are no easier to overcome than those just mentioned. They are all the more important in that, despite the purchase of some office equipment and vehicles, the state of the legal system still leaves much to be desired, since there is a severe lack of everything. For the time being, emphasis is being placed on restoring old buildings or building new ones. The restoration of the Supreme Court building should be completed in two months. Similarly, the buildings housing the prosecution services and the courts of first instance and the courts of appeal are in the process of being renovated with financial assistance from USAID. The Trust Fund mentioned above has programmed US$ 3 million to be made available to the Ministry of Justice. Under a Government project, part of these funds are to be used for technical support, for the triage committees (commissions de triage) and equipment for courts and tribunals. The present equipment does not allow these to operate at present, and this only delays the trial of the presumed perpetrators of the genocide. The Secretary-General of the United Nations commented sharply on this situation in his report to the Security Council of 1 December 1995 (S/1995/1002) when he said: "Because the Rwandan judicial system is not yet functioning, criminal trials cannot commence ...". This is not the case of the International Tribunal for Rwanda which has begun proceedings.

2. Proceedings in the International Tribunal for Rwanda

53. Since its official installation in The Hague on 27 June 1995, the International Tribunal has made progress in the inquiry into the genocide and should soon begin trials. However, its success will depend on the cooperation of the States, particularly those on whose territory the main instigators of the genocide are to be found.

(a) Progress of the Tribunal's activities

54. The start of the trials was dependent on the restoration of the buildings of the Arusha International Conference Centre, where the International Tribunal has its headquarters. As a result of the efforts of the Secretary-General of the United Nations and despite the Organization's financial crisis the work of restoring the Centre was carried out rapidly, with the result that early in January 1996 it became operational and could be used from 8 to 12 January for the second plenary session of the Tribunal which proceeded to adopt a directive on assignment of defence counsel, the rules governing conditions of detention of persons awaiting trial before the Tribunal and the adoption of the Tribunal's annual report..

55. The progress thus made in ensuring effective operation of the Tribunal confirms the trend already mentioned in connection with the progress of investigations within the Government Procurator's Office. In the above-mentioned report to the Security Council, the Secretary-General noted that a total of $6.4 million had been made available to the Voluntary Fund to

Support the Activities of the Tribunal. These funds have enabled personnel to be recruited both for the Registrar's Office and for the Government Procurator's Office. Some countries have also made available experienced investigators to help in the investigation of cases. Much nevertheless remains to be done, particularly as regards recruitment of personnel and, more especially, cooperation by States which have received or given asylum to the instigators of the genocide.

(b) The problem of cooperation by States

56. As mentioned in the Special Rapporteur's last report, only the principal instigators of the genocide will in fact be answerable to the International Tribunal. Since most of them are living abroad, the problem arises whether the States on the territories of which they have taken refuge will agree to collaborate with the International Tribunal. The problem is all the more acute as a number of these States have denied the existence of the genocide and some of the presumed perpetrators continue to benefit, if not from support, at least from the sympathy and protection of those States in the territories of which they live and move around unmolested and with all impunity. It is precisely to put an end to this unfortunate situation, distressing for the victims and embarrassing for the conscience of the international community, that the Security Council adopted resolution 978 (1995) of 27 February 1995, concerning cooperation between States and the International Tribunal for Rwanda. While this measure is initially conservative, it should have all the required effects in inducing the States concerned to implement it in good faith; they are urged, where there is sufficient evidence, to arrest and detain the presumed perpetrators of the genocide, pending prosecution by the International Tribunal.

57. Even before this resolution was adopted, some States had already initiated proceedings against the presumed perpetrators of the genocide on their territory. The cases of Belgium, where four suspects were arrested and detained, Canada, where legal proceedings were initiated against a high official of the former regime suspected of being one of the instigators of the genocide, and Switzerland, where another high official was arrested and imprisoned, may be mentioned. Since 27 February 1995, other States have conformed to resolution 978. Zambia has arrested 14 persons sought for their participation in the organization and carrying out of the genocide and is preparing to extradite them so that they may appear before the International Tribunal. Kenya did the same in December 1995 and arrests have allegedly also taken place among the suspects in Zaire. However, in these latter cases, prudence is advisable, since the arrests have targeted secondary criminals, the principal instigators of the genocide being practically safe from prosecution. It is to be hoped that the start of the trials will contribute to inducing States to change their positions and to reassuring the victims of the genocide so that the reprisals and indeed actual human rights violations will diminish and even come to an end.

II. CURRENT VIOLATIONS OF HUMAN RIGHTS

58. Notwithstanding certain isolated improvements, the human rights situation seems to be deteriorating, owing in particular to the addition of a new form of violation which had previously been barely noticeable: violations of

freedom of expression. The following forms have been noted: violations of property rights, of freedom of expression, of personal security and of the right to life.

A. Violations of property rights

59. Violations of property rights come down in the main to the illegal occupation of property: this is one of the key problems of Rwanda, and one to which the solution is far from clear.

1. The problem of the illegal occupation of property

60. There are certain towns which are not affected by the evils arising from the illegal occupation of property since they have unoccupied houses and there are formal means of settling disputes which operate more or less satisfactorily; this applies to Gisenyi, Ruhengeri and Kibuye. But this is no more than an exception which proves the rule. The problem of the occupation of other people's property arises on a continuing basis in several large urban areas, particularly in Kigali, Byumba and Kibungo. In November 1995, human rights observers reported at least 18 cases of violations of human rights connected with disputes over real estate; some of these even ended in murder. One case in point was the murder, on 23 August 1995, of Mr. Callixte Kamanzi, which occurred when he was trying without success to regain possession of his house, that had been occupied by an APR captain. Observers in Kigali also reported several other cases of death threats made against dispossessed owners. Others, after claiming their property, were arrested and imprisoned on charges of having taken part in genocide.

61. The problem of illegal occupation is as difficult as it is fundamental. It is difficult because the Rwandan State, which has barely emerged from the ordeal of the civil war, is confronted by the twofold obligation to ensure respect for the property rights of the new refugees who have been dispossessed, in particular by recovering their property, and to safeguard the right to resettlement of former refugees who have been repatriated or evicted and to find them somewhere to live when they have been dispossessed. The scale of the task will be apparent if one bears in mind that former refugees number at least 600,000. The situation, which is already precarious because of property occupations, will be still further complicated in the event of the mass return of refugees. This problem is also a fundamental one since it is a source of other problems and conflicts the solutions to which depend on it. The resolution of the problem of property will undoubtedly contribute to reducing the frequency of malicious accusations and, accordingly, the number of arbitrary arrests and detentions, and murders. The problem is therefore one that has to be tackled and an appropriate solution must be found within a reasonable time. At present the solutions envisaged are far from being appropriate.

2. Solutions which are still inadequate

62. Being aware of the importance of the difficult problem of property, the Rwandan State and the international community have taken active steps to seek a solution. There is thus a distinction to be made between the action of the public authorities and that of private institutions.

(a) Action by the authorities

63. Following the failure of the land dispute committee, the Government decided to suspend its activities and proposed two solutions to the problem. The first is the adoption of an administrative rule making the State responsible for the management of currently vacant property. The second concerns the plan to develop certain sites where it is intended to resettle repatriated people within community structures (peasant villages): the purpose of this development is to improve sites to make them habitable (provision of water and electricity, construction of schools and hospitals within the boundaries identified, and so forth). The Administration will allocate a plot of between 1.5 and 2 hectares to each repatriated family for residential occupation and farming. The development mainly concerns three major sites in the regions of Mutara, Bugesera and Ruhengeri. Unoccupied plots of land situated at the edge of the Akagéra national park have already been divided up. Lastly, the Government intends to complete the site development measures by taking steps to expropriate land on grounds of public interest, subject to the payment in advance of fair compensation, and to redistribute it as part of an agrarian reform programme that is in preparation.

64. UNDP has provided assistance to the Government in carrying out these projects. It has also provided one-time assistance to the World Food Programme which has had some 600 houses built in the Akagéra park region as part of its "food for work" programme. However, UNDP is specific about the form to be taken by the aid granted: site development is a preliminary measure intended only to facilitate self-construction. It is therefore not a matter of building villas to be handed over to beneficiaries ready for occupation, nor of financing their construction. The aid is intended to assist the Government to create the conditions for the construction of homes. The cost is met by the Voluntary Fund for Rwanda of the Secretary-General of the United Nations.

65. It should be mentioned that the Voluntary Fund, which was set up following the Geneva Round Table Conference in January 1995, is beginning gradually to receive contributions. Whereas in July 1995 at the time of the mid-term review of the implementation of projects decided on in Geneva, only 20 per cent of the total funds pledged had been deposited, the proportion of sums deposited rose to 43 per cent between mid-July and November 1995. That is a remarkable improvement which deserves further encouragement.

66. In addition to action being carried out or planned by the public authorities, with UNDP assistance, mention should be made of private initiatives.

(b) Action by private institutions

67. In view of the inadequacy of the solutions adopted by the Government and in order to help in resolving the housing crisis, certain non-governmental organizations and individuals took action to build new dwellings. Several examples are worthy of mention.

68. In Gitarama prefecture where about 14,000 houses had been destroyed during the massacres and hostilities, the diocese of Kabgayi, under the lead of Mgr. André Sibomana, managed to secure funding and to launch a major plan for the reconstruction of some 14,000 mud houses. A first batch of 1,000 houses was therefore made available to the homeless during 1995; another 1,000 homes are under construction. In allocating these houses, valued at between 250,000 and 300,000 Rwandan francs (or US$ 1,000) priority is given to those whose homes have been destroyed. Some of the people concerned have also taken part in the reconstruction work.

69. Also in Gitarama, in Taba and Runda communes, the Rwandan Agency for Development and Cooperation (ARDEC) has already built some 100 houses for widows, survivors of genocide and returnees. In Kibungo prefecture, Rwiukwavu commune, ARDEC, in collaboration with other non-governmental organizations such as Urumuli which distributes plots of land to returnees, and ASOFERWA (Rwandan Women's Alliance and Solidarity) which provides doors and windows, has already built several hundred houses intended for widows, orphans, returnees and survivors of genocide.

70. In the majority of prefectures, several similar projects are currently being conducted. It is to be hoped that financial support will be forthcoming from the international community since that will make it possible to extend this movement of solidarity and to reduce the number of instances of illegal occupation of property. The example of the diocese of Kabgayi is a clear case in point: human rights observers have noted that, following the allocation of houses built by the diocese, there was a significant drop in the number of arrests, particularly those due to disputes over housing or land. The situation is different, however, as regards arrests connected with freedom of expression.

B. Violations of freedom of expression

71. Violations of freedom of expression take the form of intimidation and aggression targeted particularly at journalists, religious workers and people belonging to other professional categories who make their opinions known orally or in writing.

1. Journalists

72. The primary target appears to be journalists and, through them, press freedom. The press is subject to censorship: suspension of newspapers and seizure of copies. Examples include the suspension of newspapers such as Arc-en-Ciel, Le Messager and Le Tribun du Peuple; another case was the seizure, on 4 October 1995, of the weekly newspaper Le Partisan. It also applies to the confiscation of the files and equipment of the newspaper Le Partisan, for having criticized the "excessive" expenses incurred for the commemoration of the fifth anniversary of the death of Fred Rwigema, former Commander-in-Chief of the APR/RPF.

73. But attacks on the freedom of the press have mainly taken the form of physical aggression preceded by threats and intimidation, to which several journalists were subjected between January and November 1995. Three fairly well-known cases may be mentioned. The first is that of the attack on

Mr. Edouard Mutsinzi, Editor of the newspaper Le Messager, which followed criticism he had made against the policy of the Government: at 9 p.m., on 29 January 1995 he was in a bar in the company of his wife and some friends when three men in civilian clothes beat him up violently. He was seriously injured and was evacuated to Nairobi for humanitarian reasons by the Human Rights Field Operation in Rwanda. The second case was that of Mr. Théoneste Mubuantwali, Editor of the weekly Nyabarongo, who narrowly escaped an attempt on his life prepared by three civilians and a soldier towards the end of July 1995. Finally, the third case concerns the disappearance on 19 August of Mr. Manasse Mugabo, Rwandan correspondent of UNAMIR radio: he went on holiday for 12 days and has never been seen again; efforts to find him have so far been unsuccessful.

2. The religious community

74. Religious workers, particularly priests of the Catholic Church of Rwanda, are also targets of threats and physical aggression. Several examples may be mentioned, merely as an indication. As early as October 1994, a Canadian monk, Father Simmard, was found dead and bound in the Butare area. Recently, a Rwandan priest from Kamonyi parish, Abbé Pie Ntahobari, was murdered and found dead on 2 August 1995. Father Ramon Amounarriz, who contributed to numerous development projects over the past 20 years, felt he was being harassed by APR soldiers and preferred to leave Rwanda. During the searches that were made for him by five members of the APR, seven Franciscan nuns whose home had been entered and searched, were beaten up. Consistent and reliable information indicates that even Father Blanchard, who saved so many lives during the massacres in Nyamirambo parish (Kigali), is under threat. The same applies to Mgr. André Sibomana, the Apostolic Administrator of the diocese of Kabgayi, Editor of the periodical Kinamateka and human rights militant, under both the former regime and the new one; he is accustomed to threats and intimidation from APR soldiers.

75. Religious personnel are targets not for confessional reasons but rather for political motives. This applies to the Seventh Day Adventist Church, 15 of whose members were arrested and imprisoned on 14 November 1995 and 44 others on 24 November on charges of failing to obey the curfew and showing disrespect for the national flag. The same is true of the Catholic Church, which is perceived as being an ally of the former regime because of the privileged relations of its hierarchy with the authorities up to April 1994. The thinly veiled anti-clericalism of the new regime is exemplified by the reaction to the homily of Pope John-Paul II in Uhuru Park in Nairobi on 19 September 1995 by the Minister for Foreign Affairs of Rwanda who said on 22 September: "The Rwandan people and the Government of National Unity, in addition to the blessing of the Holy Father, would have wished to hear words of comfort indicating condemnation of the crimes against mankind committed by the first 'Nazis of Africa' and of the bad policy which relied on ethnic differences to practise division, exclusion and genocide ... Rwanda should be given help to preserve the unity of its people rather than appeals for 'forgiveness' without repentance and for a superficial 'national reconciliation' between the victims and their tormentors." In addition, and still in the context of attacks against the Catholic Church, a senior

government official declared on the occasion of a ceremony to inter the bones of the victims of massacres in November 1995 that "the Muslims behaved better than the Christians during the massacres".

3. Other professional categories

76. Other professional categories are suffering greatly from the decline in freedom of expression. Without going into detail, we shall merely mention that magistrates, deputies and active members of political parties and of human rights associations have been threatened for having expressed themselves freely. In the latter case, mention should be made of the arrest and imprisonment on 18 November 1995 of Mr. Théobald Gakwaya Rwaka of the League for the Defence of Human Rights in Rwanda (LIPRODHOR). He was accused of having stated that "Rwanda is not yet a State under the rule of law". More recently, at the beginning of December, it was the turn of the new President of the Collective of Associations for the Defence of Human Rights in Rwanda, Mr. Jean-Baptiste Barambirwa, to be arrested after he had just made a speech. He was released on condition that he reported once a week to the gendarmerie.

77. Lastly, it should be mentioned at this point that some 30 non-governmental humanitarian organizations were asked, at the beginning of December 1995, to leave Rwanda. A senior government official explained to the Special Rapporteur during his last visit to Rwanda that several reasons had prompted the Rwandan Government to take that step. The first was the fact that certain international organizations had established themselves "anarchically" in the country without signing a basic contract with the authorities. The second, which follows from the first, was that, by behaving in that way, the NGOs concerned had not integrated their activities in the overall reconstruction programme of Rwandan society; this had entailed a dissipation of efforts the adverse effect of which had been that their activities had had no impact on the improvement of the situation in the country. Furthermore, the real value of their investment in the field according to the senior official, was marginal in relation to the large sums spent on salaries and overheads. In that connection it is claimed in Kigali that the luxurious lifestyle of the expatriate officials of the NGOs involved was in contrast with the impoverishment of the afflicted population they had come to assist. Lastly, the Rwandan authorities suspected certain organizations of having engaged in espionage. However that may be, consistent evidence proves that expulsion orders were issued against some of the organizations because they had denounced serious and acknowledged violations of human rights, in particular during the Kibeho massacres in April 1995. Such measures are therefore not divorced from political considerations which, in the case of nationals, go together with attacks on personal security.

C. Violations of the right to personal security

78. The right to personal security still suffers from serious violations which continue to be a matter for concern. These violations are particularly disturbing in that the Rwandan Parliament has attempted, albeit in vain, to suspend the right to personal security, arbitrary arrests and detentions are continuing and the conditions of detention remain distressing and have not been perceptibly improved by the partial refurbishment of the prisons.

1. The unsuccessful attempt to suspend the right to personal security

79. The legislature passed an Act to suspend fundamental safeguards with respect to detention but it was fortunately censured by the Constitutional Court. The facts are sufficiently serious to warrant attention. On 9 June 1995, the Rwandan Parliament passed an Act suspending the application of the rules on remand in custody and the release on bail of persons charged with genocide, massacres, war crimes, crimes against humanity and other crimes. In accordance with article 75, paragraph 1, of the Constitution of 10 June 1991 (Basic Law), the Act was submitted for review as to its constitutionality to the Constitutional Court. In its judgement of 26 July 1995, the Court declared the Act to be incompatible with the Basic Law: in general, it considered that the law it had censured was in conflict with a generally recognized principle of criminal procedure according to which "liberty is the rule, and detention the exception". More substantially, the Court found that the law violated several of the fundamental safeguards of any accused and detained person which were enshrined in the Rwandan Constitution and in relevant international instruments that were binding on Rwanda. Those safeguards were: the presumption of innocence, the right to a fair hearing, the independence of the judiciary, the principle of security and that of the non-retroactivity of criminal laws.

80. Article 1 of the Act of 9 June 1995 which, on an exceptional basis, provides for suspension of the procedural rules relating to remand in custody and release on bail was found by the Court to be incompatible with the principle of the presumption of the innocence of any accused person. According to that principle, any person accused of having committed an offence or a crime is deemed to be innocent until such time as his guilt is proved. It is embodied both in article 12, paragraph 1, of the Constitution and in numerous international instruments including the Universal Declaration of Human Rights (art. 11, para. 1) and the African Charter on Human and People's Rights (art. 7, (b)).

81. Article 2 of the Act provides: "The period [the duration of the suspension] which shall in no case exceed four years, shall be determined by the Minister of Justice on the decision of the Council of Ministers subject to the approval of the Supreme Court." The Court considered, in the first place, that the duration of the suspension, namely four years, was incompatible with the right of any accused person to a fair hearing, which implies that the trial takes place within a reasonable time. This principle is enshrined in particular in article 9, paragraph 3, of the International Covenant on Civil and Political Rights (to which Rwanda is a party) and in article 33 of the Constitution. Turning next to the question of the competence of the Minister of Justice to determine the duration of suspension, the Court considered that the provision violated the principle of the separation of powers and its corollary, that of the independence of the judiciary vis-à-vis the legislature and the executive. Consequently, it violated the Basic Law and article 6, paragraph 3, of the Memorandum of Agreement on the Rule of Law of 18 August 1992 which formalized the separation of powers. Lastly, on the same matter, the Court stated that, in law, by leaving the power of determining the duration of suspension of the law to the discretion of the executive, the legislature also infringed the principle of security which provides that

persons may be arrested and detained only in the manner prescribed by law. That is no longer the case if arrest and detention are made by virtue of a rule, as in the present case.

82. Furthermore, the Court censured article 3 of the Act it was considering. It took the view that, by providing that it would be effective from 6 April 1994, the Act violated the principle of the non-retroactivity of criminal laws. It was thus "incompatible with the spirit of article 9, paragraph 1, of the International Covenant on Civil and Political Rights in that the Act is designed to replace a procedure for arrest, remand in custody and release on bail by a new procedure that is more subversive of fundamental rights".

83. Thus the 1963 Act on the rules for remand in custody and release on bail remains in force. Arrests and detentions carried out in defiance of its provisions must thus be regarded as arbitrary. That is the case with the majority of such actions carried out to date.

2. Arbitrary arrests and detentions

84. The number of arrests and detentions, after having more or less stabilized, has been increasing appreciably and steadily since October 1995. From an average figure of 550 per week from October to mid-November, the number of persons arrested has fluctuated between 800 and 1,200 per week following the escalation of insecurity largely due to incursions by former militiamen and soldiers from Rwanda's former armed forces. It was in this context that the Secretary-General of the United Nations, in his report to the Security Council mentioned earlier (S/1995/1002), stated that acts of infiltration and sabotage had been committed by these armed refugees along the frontier between Rwanda and Zaire. This situation prompted the Rwandan authorities to strengthen their security forces along the frontier and to carry out arrests and detentions on a massive scale throughout the territory in their search for the "infiltrators". The situation deteriorated still further following the attack and victory of the APR on Iwawa Island in Lake Kivu, over members of Rwanda's former armed forces and militiamen who were training there. Their intervention on the island resulted in an increase in the number of patrols and searches and thus in the numbers of persons arrested and detained.

85. Waves of arrests took place, particularly in Cyangugu, Butare, Gitarama and Kibuye prefectures. Human rights observers report that the persons most affected, belonging to the Hutu ethnic group, are civil servants, teachers, returnees working as small-scale traders, former soldiers from Rwanda's former armed forces and the local employees of humanitarian organizations. An increase in persons detained in communal jails is also noted. Thus, between October and November 1995, over 400 persons were incarcerated in the 17 communal jails of Gitarama prefecture. As in the past, these arrests are made following denunciations of participation in genocide. Other reasons are also given, such as "disturbing the peace at night", unauthorized association and breaches of the peace, aimed in the main at religious sects. Numerous instances of arrests on those grounds have been identified in Kibuye and Gitarama prefectures.

86. In most cases people are arrested without a warrant and by officials who have no actual arresting authority: soldiers, communal policemen and burgomasters; many people are detained without being informed of the charges against them. It is indeed rare for persons arrested and detained to have a case file. In October 1995, only 160 of 2,000 persons detained in the central prison of Cyangugu had files recording evidence against them. It is also to be noted that where files do exist they are incomplete and lacking in probative elements such as evidence for the prosecution or the defence. Many files consist mainly of a record drawn up following the first interrogation. In the country as a whole there are about 20,000 persons in detention who have never been heard by any judicial authority. Furthermore, there are reports of the existence of numerous unofficial detention centres or simply private cells. Thus, in Gisenyi prefecture alone there are said to be more than 10 of these, in which over 100 persons are detained. It is admittedly difficult to give the exact number of these detention centres throughout the territory of Rwanda but consistent reports confirm their existence. Finally, certain detention centres are not open to visits by human rights observers. This applies to those in the subprefecture of Kanazi. The same is true of the military detention centres, to which it is difficult for observers to gain access. For example, it was only on 30 November 1995, or one year after the deployment of the Human Rights Field Operation in Rwanda, that observers were authorized to enter the military jail of Birambo (Kibuye prefecture) to interview the 50 detainees held there.

87. There are several reasons which may account for the escalation in cases of arrest and detention, of which two of the most important will be mentioned. One is "structural" while the other is due to prevailing circumstances. The former is a result of the false accusations referred to previously in the report of 28 June 1995 (E/CN.4/1996/7). The second is related to the deterioration in security due to the incursions.

3. Deplorable conditions of detention

88. The situation in prisons and other detention centres continues to cause concern. It is characterized by overcrowding and by inhuman and degrading treatment, despite the partial refurbishment of prisons.

(a) Overcrowding in prisons

89. In his last report (E/CN.4/1996/7), the Special Rapporteur already noted the overcrowding of prisons and official detention centres. The prison population was estimated respectively at 29,400 persons in the 13 official detention centres as of 29 May 1995, and at 46,000 in all prisons as of 10 June. Those figures have increased substantially, having risen, as at 6 December 1995, to 44,712 and about 61,210, respectively. They will certainly have to be revised upwards because of the increase in persons incarcerated in isolation cells. Although the population of the majority of the prisons is relatively stable, that is not the case in the prisons of Kibuye, Gikongoro and Nyanza, where numbers of inmates have risen substantially, swollen by the transfer of prisoners from isolation cells. The rise in numbers is as follows: Kibuye from 1,965 to 2,531; Gikongoro from 1,040 to 1,439; and Nyanza from 1,565 to 2,804.

90. The overcrowding of Rwandan prisons remains at levels that are humanly intolerable. This applies, for example, to the prison of Butare which, at 31 December 1995 housed 6,790 detainees in a space intended for about 1,200, in other words five times more than capacity; Kigali prison, which, at the same time, housed 10,082 detainees in a space intended for approximately 2,000, was thus overcrowded to the same degree as that of Butare. The overcrowding is still more acute in the communal jails: this applies to the jails of Ngenda (Rural Kigali prefecture), Muhazi (Kibungo prefecture), Ntongwe (Gitarama prefecture), Kivumu and Rutsiro (Kibuye prefecture).

91. The deplorable conditions of detention, resulting from prison overcrowding, which were described in the previous report (paras. 72 and 73) have not, with few exceptions, radically changed. There is therefore no need to revert to the matter apart from indicating, however, that the insanitary conditions tend to deteriorate markedly as a result of the increasing failure to make provision for waste disposal. This situation increases the threat to the life of children, the old, the sick and women, including those who are pregnant. These vulnerable categories share the same premises and the same conditions of detention as the other detainees. There is, however, an exception which confirms the rule: the prisons of Butare, Kigali, Kibuye and Gitarama have separate accommodation for men and women. It is important to note in passing that the conditions of detention are even worse in the communal jails, particularly on account of the inhuman treatment inflicted on detainees.

(b) Inhuman treatment

92. Most of the cases of cruel, inhuman or degrading treatment reported to the Human Rights Field Operation still occur at detention centres. Instances of ill-treatment have been reported in the communal jails of the prefectures of Kibuye (Kivumu, Mabanza), Gikongoro (Musange, Rwamiko, Rukondo), Butare (Rusatira) and Gisenyi (Ramba) and Gitamara (Runda, Kayenzi). Such practices have also been recorded in the gendarmeries of Butare, Ruhengeri, Cyangugu-Cimerwa and Gikongoro. Physical assaults of this kind caused the death of three detainees in the communal jail of Runyinya (Butare prefecture) on 28 and 29 October 1995, and of a fourth in Ngenda jail (Rural Kigali prefecture), on 29 November 1995.

93. In addition to the forms of cruel, inhuman or degrading treatment described in the previous report, there are some new forms that are making a tentative appearance and are likely to become more widespread. These include necklacing, rape, denying food or medical treatment, detention in the "amigos", the most unwholesome, darkest and most sinister places in the detention centres where the prisoners are heaped one on top of another, presenting food on dirty paper or even on the ground. The multiplication of physical assaults and their intensity are likely to nullify the beneficial effects of the partial improvement of the prison premises.

(c) Partial rehabilitation of prisons

94. For several months following the failure of the case file sorting commissions (commissions de triage), the Rwandan Government, with the

assistance of the international community, undertook various types of action to increase the admission capacity of the prisons and detention centres. Only the three most important of such measures will be mentioned.

95. The first entailed altering the prisons of Kibuye, Cyangugu, Gisenyi, Byumba and Nyanza in order to increase their admission capacity. This resulted in a substantial improvement in the conditions of detention in certain prisons. That was the case with Gitarama prison which received a new extension where, on 19 and 21 November, it housed about 2,640 detainees. This prison provides the most representative example: a few months ago it was beating all records for prison overcrowding and detainees suffered the most atrocious treatment as a result of being in such cramped conditions, one on top of the other. The decongestion as a result of the new extension substantially improved the conditions of detention. There has been a considerable drop in the death rate: whereas the number of deaths previously averaged two per day, no death was recorded during the month of November.

96. The second measure involved the construction of a new prison capable of holding 5,000 detainees. Situated at Nsinda, in Kibungo prefecture, it was inaugurated on 5 November 1995. Between 17 and 30 November, 5,091 detainees from Byumba, Kibungo and Kigali prisons were transferred there in UNAMIR vehicles and under surveillance by human rights observers. It is important to note that the transfer operations took place without incident.

97. The third measure was the identification of seven sites to serve as "provisional detention centres". As the name indicates, these are detention centres of a strictly temporary nature intended to provide a short-term solution to the problem of prison overcrowding and to alleviate the present humanitarian crisis. The seven sites are: ONATRACOM (Remara III), in Kigali prefecture; the Kabuga Warehouses at Gikondo, also in Kigali prefecture; the RWANDEX Warehouses, in Butare prefecture; the OPROVIA Warehouses, in Kibungo prefecture; the OPROVIA Warehouses, in Byumba prefecture; the OCIR Depository, in Gisenyi prefecture; and the Rilima Security Area, in Rural Kigali prefecture. Transfers of detainees are scheduled to take place in the coming days to the sites of the Kabuga and RWANDEX Warehouses.

98. Given, however, that these sites afford only a short-term solution, the Government envisages the construction of five new permanent detention centres for which there is as yet no funding. It is, however, necessary to build them, in view of the prospect of a large-scale return home of refugees and of possible arrests among them, in order to avoid risk to human life.

D. Violations of the right to life

99. Human rights observers report that violations of the right to life are continuing. They still consist in the main of summary executions, abductions and enforced disappearances.

1. Summary executions

100. As in the previous period, the summary and extrajudicial executions that were brought to the attention of the human rights observers include murders and massacres.

101. The murders are attributable to various persons: the State, former interahamwe militiamen or members of Rwanda's former armed forces, unidentified but uniformed individuals and survivors of genocide. But the majority of murders are attributed to the State through its organs, particularly the APR. In November, the State was involved in 62 of the cases of murder and death resulting from ill-treatment that were recorded by the Human Rights Field Operation. The figures available for October and November alone show a considerable increase, rising from 51 to 63 and involving, in descending order: men (43 in October and 43 in November), women (5 in October and 16 in November) and children (3 in October and 4 in November). The victims were killed by gunfire, by blades (knives or machetes) or died as a result of cruel treatment. Seven of the 10 prefectures where there is a regional office of the Human Rights Field Operation were the scene of such summary executions. But the prefecture the most frequently involved is Gikongoro: 31 of the 62 cases of murder identified, in other words half of their number, took place there. The explanation lies in the massacring of displaced persons, massacres for which the APR is responsible.

102. The period covered by this report includes three massacres. The first one took place on 6 November in Nshili commune (Gikongoro prefecture): 7 people, including a girl of 12, were shot to death there by an APR soldier who was found dead not far from the incident; the local authorities, who said that the soldier had been seized by a fit of insanity and had subsequently killed himself, did not allow the observers to examine his body. The second massacre took place on 25 November 1995 in Nyungwe forest (Gikongoro prefecture) in an unofficial camp: 13 victims comprising at least 6 women, 2 children and 3 men were counted by the Operation. According to eyewitnesses they were killed in cold blood by APR soldiers, whereas the latter claimed that they acted in self-defence; an inquiry has been opened. The third, the best known, was the massacre at Kanama (Gisenyi prefecture), which occurred during the night of 11 to 12 September 1995 and resulted in the death of 110 people including women and children. The direct involvement of APR soldiers in these killings has been acknowledged by the Minister of Defence himself who stated that "they made excessive use of their weapons".

103. The circumstances of this third massacre deserve to be briefly reported. On 11 September at about 7 p.m., an APR second lieutenant, accompanied by his driver, two bodyguards and another person, was coldly shot dead at what was apparently a bogus roadblock. Following this incident, about 60 soldiers encircled the neighbouring villages of Bitizi and Kayove in Kanama commune. According to the APR officer in command of the sector, the second lieutenant's murderers had taken refuge in those villages and then opened fire on the APR soldiers who had been sent to the scene. It was claimed that the latter then returned fire and it was during this incident that deaths and injuries occurred. On the other hand, according to consistent statements by the villagers who survived, the majority of the victims, including women and children, were killed either inside their homes or in the courtyard of their houses. These statements were corroborated by the inquiry carried out jointly by the Human Rights Field Operation and the National Gendarmerie.

104. It is important to note that, according to information from certain prominent Rwandans, massacres of Hutu populations have taken place on a

massive scale. The former Prime Minister, Mr. Faustin Twagiramungu, puts the figure at 310,000 dead. That estimate is based on information provided by the former Director-General of the Internal Intelligence Service, Mr. Sixbert Musangamfura, who was in office from September 1994 to August 1995. The Special Rapporteur cannot confirm this information at the present stage of his investigations; however he met some of the persons named, including the former Prime Minister, who promised to make available to him the documents and evidence in their possession. Once that material has been received it will be studied in detail and an inquiry on the spot will be carried out by human rights observers to whom numerous cases of abduction and enforced disappearance have already been referred.

2. Abductions and enforced disappearances

105. In his last report, the Special Rapporteur noted the increase in cases of abductions and enforced disappearances of Hutus (paras. 106-109). These acts, which are attributed to APR soldiers and sometimes to militiamen and soldiers from Rwanda's former armed forces, are directed against refugees who have recently returned to Rwanda. The victims often reported missing after being arrested, detained or transferred from one detention centre to another; they are almost exclusively adult males. The greatest number of people were abducted or reported missing in Gisenyi prefecture, followed by Kibuye, Ruhengeri, Kigali-Ville and Rural Kigali prefectures.

106. Several examples will be mentioned, purely as an indication. A retired captain of Rwanda's former armed forces, Deo Kabera, was arrested on his return from Zaire on 19 August 1995. Being originally from Karago commune, he asked to be transferred to the ETAG detention centre and stated that he had no intention of joining the APR. On 26 September he left ETAG for Kigali in the company of the lieutenant commanding that centre. Attempts to find where he was taken have so far been to no avail.

107. On 25 September 1995, the burgomaster of a commune in Kibuye arrested two brothers, Ephrem and Dogabo Hakizimana, who were accused of having taken part in genocide. He informed the Human Rights Field Operation that he had sent the complete files on the two brothers to the court. The procurator stated one month later that he had never received the files. To this day it has not been possible to find the two people concerned in any of the communal jails in the prefecture, or in the central prison. The two brothers are therefore reported as missing. It is thought that they have either been executed or have been taken to a military camp to which human rights observers have no access. Lastly, two refugees answering to the names of Karani and Karemangiro, respectively from Karumbi and Nyabiyega in Gisovu commune (Kibuye prefecture), have also been reported missing; they were arrested by APR soldiers and taken into a forest; since then they have not been seen again.

108. Many more examples could be quoted. However it is important to note that abductions and enforced disappearances, which had increased in number since August, have recently decreased markedly. Whereas, in August 1995, human rights observers had 18 cases referred to them, 1 being a case of voluntary disappearance, the figure fell in November to 2. It is to be hoped that this downward trend will continue, in which case it might be conducive to the return of refugees.

III. THE RETURN OF REFUGEES

109. Since the closure of the camps and the forced repatriation of displaced persons to their communes of origin, the problem of returnees arises only in relation to refugees. No substantial progress has yet been made in this respect and, on the contrary, the problem has been further complicated by the forced repatriations of refugees from Zaire and by the threat of new expulsions.

A. Expulsion of Rwandan refugees from Zaire

110. During his visit to Rwanda in August 1995, the Special Rapporteur received detailed information from human rights observers, UNHCR officials and several other trustworthy sources, concerning expulsion operations and the reception of expelled refugees.

1. Expulsion operations

111. Operations to expel Rwandan refugees living in Zaire were, it seems, launched unexpectedly by the Zairian authorities on the morning of Saturday 19 August 1995. Initially, local authorities were not involved. At first Zairian soldiers collected people haphazardly without regard for nationality on the road leading to Mugunga camp and loaded them by force in specially hired trucks. The group included several Zairian nationals, who were later released. On the following day, 20 August, no repatriation activity was observed. On Monday 21, however, repatriation operations began in earnest. They started around 10 a.m. and were conducted with brutality by hundreds of Zairian soldiers. Several acts of violence, including pillaging, vandalism, rape and beatings, were committed against refugees. Shots were fired in the air to intimidate them and to force them to evacuate the Libero and Rimera quarters in Mugunga camp. Three refugees suffered bullet wounds, and much of the camp was in complete disarray. A number of tents, commonly known as "blindés", were either completely or partially ransacked, while others were set fire to or destroyed by the soldiers. Some of the American Refugee Committee's medical facilities in Mugunga camp suffered the same fate, being sacked and pillaged, first by the Zairian soldiers and then by refugees, which left them virtually unserviceable.

112. The refugees expelled in this way from Goma to the Rwandan frontier included more women, elderly people and children than youths or male adults. According to some sources, the soldiers who carried out these reprehensible acts may have disregarded the instructions given by their superiors. At no time did the Zairian troops made available to the United Nations to ensure security in the camps intervene to protect the refugees, who, bewildered and panic-stricken, fled in large numbers into the surrounding hills or to other camps which had not yet been affected by expulsions.

113. The expulsion operations continued on 22 August a little more calmly, without any pillage, apart from the burning of some tents. About 30 Zairian soldiers were directing the loading and transport of refugees, while others were deployed all along the road from Goma to Mugunga, which was the refugee route. This time the Zairian military contingent responsible for protecting the camps was present at the hospital run by the American Refugee Committee

and supervised UNHCR convoys throughout the trip to the frontier. However, access to the camp was still closed to UNHCR personnel (except security personnel and department chiefs), as well as to some non-governmental organizations. As a result, emergency humanitarian aid was temporarily suspended.

114. On Wednesday 23 August, the expulsion operations continued without any major incident or unrest. The atmosphere was still notably tense, however, in Mugunga camp. The 500 occupants of a centre for unaccompanied children were evacuated for safety reasons. Finally, on Thursday 24 August, the feelings aroused in the international community by the inhuman conditions in which the Rwandan refugees were being expelled and the resulting reactions led to the opening of negotiations between UNHCR and the Zairian Government in order to arrive at a temporary suspension of the forced repatriations.

115. According to some sources, the camps of Kibumba, Katalé and Mugunga had been given priority in the voluntary repatriation operations planned by UNHCR. That did not mean, however, that the UNHCR could not take charge of voluntary departures in other camps. In fact, refugees' fears centred less on their departure than on their arrival, that is, the sort of reception that awaited them.

2. Reception of expelled refugees

116. In the light of his interviews during his visit, at the time of the expulsions and in the course of field trips, the Special Rapporteur was able to gain a picture of the real situation regarding the reception of refugees on Rwandan territory. During that period, that is, from 19 August to 1 September 1995, about 20,383 refugees returned to Rwanda, willingly or under compulsion. The action taken to deal with this situation consisted in setting up reception facilities and adopting security measures.

(a) Reception facilities

117. The facilities provided to receive refugees expelled from Zaire consist mainly in transit centres, which operate according to a specific system.

(i) Transit centres

118. The transit centres were situated near the two frontier posts of Gisenyi and Cyangugu. In the Gisenyi area, the Nkamira site served as a transit centre, where the facilities of the Tunisian UNAMIR military contingent were adapted in order to receive up to 1,500 persons, if necessary including 800 under tents and the others in the open. In addition to this site, former colleges and schools (such as the nursing school) in the region had also been converted to transit centres, where tents were set up to take in the refugees. It was estimated that all these centres together could cater for up to 10,000 refugees. The refugees were registered in Goma; 7,774 persons had been sent back from the Goma area to Gisenyi, and had also transited through the Nkamira camp before being sent on to their home communes.

119. The frontier post of Cyangugu also had two transit camps, Nyagataré and Nyarushishi, which could take up to 10,000 and 15,000 persons respectively. Only the first of these was used, with the Ruzizi I entry point and not Ruzizi II. This camp is run by a non-governmental organization known as the International Rescue Committee (IRC); the ICRC looks after only unaccompanied children, emergency cases and family reunions. The camp is fairly well organized and equipped. It consists of several parts: one group of about 200 tents built by the IRC; about 30 toilets; water containers holding up to 50 tonnes each; and 4 sheds containing the food store, the medical service, the refugee registration centre and the food distribution unit.

120. In addition to these facilities, two separate areas are set aside, one for unaccompanied children and the Red Cross, and one for a detachment of the APR. The medical staff is composed entirely of IRC employees and, at the time of the expulsions, included one doctor and two nurses (all three expatriates), as well as one medical assistant, two other nurses and one office worker, all locally recruited. Sanitary and food conditions were satisfactory. There was continuous medical supervision. Between 22 and 26 August, almost 1,000 persons had been examined for malaria. No epidemic was reported. Two refugees died. About 10 sick people were transferred every day to more appropriate hospitals. A one-month food ration was distributed to every person or family on arrival.

(ii) Repatriation procedure

121. The reception procedure adopted by the Rwandan authorities was as follows: when refugees arrived at the entry point, all luggage was thoroughly searched and APR soldiers carried out an initial sorting on the spot. After that, the UNHCR registered the refugees, who were directed to the waiting area and then loaded onto trucks headed for the transit camp.

122. The refugees had to wait about three hours from the time of their arrival at the entry point to the time when they departed again. The time allowed in the transit camp prior to their transportation to their communes of origin was about 96 hours. Departures from the transit camp of Nyagataré to the refugees' home communes proceeded at a maximum rate of 2,000 persons per day. If their communes were near the transit camp, some refugees preferred to return on foot. On 24 August, for instance, 54 refugees were reported to have set off on foot from the town of Bugarama of their own accord, under UNHCR escort, for their home communes of Bugarama, Gishoma and Cyimbogo, in the prefecture of Cyangugu.

123. The declared objective of the Rwandan authorities was to expand transport facilities very rapidly in order to speed up repatriations from the transit centres back to the communes of origin. The maximum waiting time in these camps was 48 hours. In order to avoid a proliferation of internal transit camps, with the danger that these might eventually turn into camps for internally displaced persons, the Rwandan authorities were not planning any new camps.

(b) Security measures

124. The intention with security measures was to prevent possible "infiltrations", to arrest those suspected of genocide and to protect returnees from reprisals. The measures served part policing and part confidence-building objectives.

(i) Police measures

125. The political authorities strengthened the system of regional patrols by APR forces in order to regain control of incursion pockets and to ensure security. According to the military authorities, the desired result was achieved, since, despite some infiltrations by former FAR, the reception operations proceeded without incident, thanks to successful cooperation between UNAMIR and APR forces. The authorities said that some 20 former FAR soldiers had been arrested and removed from the group of refugees for the usual checks. The soldiers then had the option of either being demobilized, or reincorporated into the APR after a course of retraining and reintegration. These arrangements were supported by further measures.

(ii) Confidence-building measures

126. In addition, the Government had adopted measures of three kinds: making transporters and local authorities responsible for the movements of refugees, shortening waiting times in transit camps and informing the population at large.

127. For the transport of refugees by truck from the transit camp to the main town of the host commune or prefecture, every driver was furnished with a waybill, which he handed to the host authority in person on arriving at the destination. The official responsible then had to sign the waybill, certifying that he had received the persons listed thereon, which was a means of guaranteeing the safety of the returnees. For the sake of transparency and in order to facilitate monitoring, it was decided that copies of the waybill would be issued to all the parties involved in the repatriation operation. Owing to the chronic logistic deficiency, however, it was not possible to introduce an effective system of checks, which might, for instance, have taken the form of unannounced visits to monitor compliance with government instructions. The results achieved were also due to the transit centres (such as Nkamira, which could take in up to 1,500 returnees per day), the shorter waiting times in the camps and the emergency committees which were set up (with government and non-government representatives) to supervise the repatriations.

128. At the same time, the Rwandan authorities had launched public information campaigns in order to avoid any mishaps such as those which occurred at the time of the Kibeho operation. These campaigns appear to have had a positive impact, if one is to judge by the overall success of the operation; refugees returned unmolested to their home communes and some even voiced appreciation of the solidarity they had been shown. Such campaigns, however, and the other measures described would still be insufficient to avoid trouble in the event of a mass return of refugees.

B. Threat of expulsion of Rwandan refugees in Zaire

129. The Zairian authorities' threat to repatriate Rwandan refugees by force is still a matter of concern for the international community, leading to the adoption of new measures.

1. Subjects of concern

130. A brief recapitulation of events may help to understand why these concerns have arisen. At the beginning of September, the Zairian authorities had issued an ultimatum demanding the forced repatriation of all Rwandan refugees by 31 December 1995 at the latest. Although, at the Cairo Regional Conference on the Great Lakes Region on 29 November 1995, the Zairian Head of State went back on that decision, he was not supported by the Zairian Government, which, while recognizing that the time allowed had become clearly insufficient, nevertheless insisted that the refugees should leave as soon as possible. The problem was aggravated by the failure of voluntary returns. This is clear from the joint communiqué issued after the tripartite meeting of 20 December 1995 in Geneva between the Rwandan Minister for Rehabilitation and Social Integration, the Zairian Minister for Foreign Affairs and the High Commissioner for Refugees. The communiqué states that the three parties, after examining the difficulties they encountered in attempting to implement large-scale voluntary repatriation, expressed serious concern at the significant fall in the number of repatriations in recent months, despite their efforts and the assistance provided by UNHCR. In view of the difficulty of applying decisions taken by earlier meetings (tripartite agreement between Rwanda, Zaire and the UNHCR of 24 October 1994 in Kinshasa; Nairobi Summit Declaration on Rwanda of 7 January 1995; Plan of Action of the Bujumbura Conference of 17 February 1995 and the Cairo Summit Declaration of 29 November 1995) and the disagreement between the Zairian Head of State and the Government regarding the departure of Rwandan refugees, it is still likely that the threat of expulsion may be put into effect. In addition to that already difficult problem, there is a further one recently created by the situation of Rwandan refugees in Burundi. As a result of the civil war occurring in Burundi, a Rwandan refugee camp, situated in Mugano in northern Burundi, was attacked in mid-January 1996. About 17,000 Hutus from the camp sought refuge in Tanzania, but were sent back. At the time of preparation of this report, a senior UNHCR official from the Ngara camp in Tanzania confirmed that these refugees, having been refused entry from both sides of the frontier between the two countries, were starting to head for Rwanda. To receive those returning to Burundi, UNHCR was re-establishing a camp at Ntamba.

131. The concerns arising from the prospect of a large-scale return, in the event of the threat of expulsion of refugees being implemented, are far from dispelled. They are linked to a number of basic problems, including: providing reception facilities for returnees; ensuring the security of refugees during repatriation and their resettlement in their home communes; breaking with the tradition of impunity by identifying and lawfully arresting all those suspected of genocide and massacres; ensuring respect for the rights of all refugees without any distinction, including those of previous years;

guaranteeing their safety in their home communes; monitoring their resettlement in their former social environment for a certain period, in order to avoid any attempts at reprisals and any acts of revenge or personal justice; and especially the problem of illegal occupation of properties. All these problems call for new measures.

2. Measures to be envisaged

132. Apart from the measures already described for dealing with illegal property occupation and the social resettlement of returnees (paras. 58-67), which are not sufficient in themselves, other measures are needed to provide an appropriate solution to the problem of the great return from exodus. They should consist of strengthening reception facilities and security measures.

(a) Strengthening of reception facilities

133. According to UNHCR representatives, in the event of large-scale expulsions of Rwandan refugees from Tanzania and Zaire, between 5,000 and 6,000 returnees could be catered for in the transit centres now operating, provided they do not stay longer than 48 hours. If they do, excesses and incidents are bound to occur, since in the event of a mass return, all available reception facilities and support measures together would be inadequate.

134. With regard to resettlement, the housing problem will be added to the problems of crops and pasture lands. According to UNHCR representatives, Rwanda needs about 500,000 houses for some 1,700,000 refugees. The solution would be to undertake an extensive programme of housing reconstruction. We have seen the limitations of the site development programmes considered by the Government with the assistance of the international community. Everyone agrees that repatriation is the only solution, but nobody wants to discuss how to proceed, according to the head of a humanitarian organization based in Kigali. The same is true of reception facilities and of the measures needed to ensure the security of refugees during and after their return.

(b) Strengthening of security measures

135. New security measures should be added to those already in place. They would consist in setting up humanitarian corridors and bridges and increasing the assistance provided by the international community.

(i) Setting up humanitarian corridors and bridges

136. In his second report (E/CN.4/1995/12, 12 August 1994), the Special Rapporteur mentioned a number of measures which had been taken by the Rwandan Government, the countries of asylum and the international community, in order to reassure the refugees and encourage them to return home. It is clear, however, that, for several reasons already referred to, these measures did not ensure the voluntary return of the refugees. Despite the success of repatriation operations undertaken in August 1995, the precedent of Kibeho in April should not be forgotten. Hence the need, the urgent need in fact, to

set up preventive security arrangements in case of a mass return of refugees. The aim should be in particular to protect convoys of pedestrians and trucks from lynching, reprisals and other acts of violence, practices observed and deplored at the time of the closure of the Kibeho camps of displaced persons.

137. In order to ensure much greater security for refugees, humaritarian security corridors and bridges should be set up all along the routes taken by the convoys of trucks and pedestrians. These humanitarian corridors and bridges, suitably equipped with medical and sanitary posts, should be organized by the Rwandan authorities with the assistance of non-governmental organizations and United Nations bodies working in the humanitarian field, including the Human Rights Field Operation. UNAMIR's material and logistic support would be essential. These organizations will be able to fulfil their mission only if, in the light of regular monitoring of the resettlement of refugees in their social environment, they are assured that the newcomers are safe from all acts of reprisals or violence. The time such monitoring would need to last following a resettlement would depend on the socio-political circumstances in each locality.

(ii) Increasing international community assistance

138. The Rwandan authorities would like the international community to commit more material support to repatriation operations. This would mean increasing the human and material resources deployed by specialized agencies of the United Nations, such as the Human Rights Field Operation and UNHCR, so as to allow them to deploy a sufficient number of human rights observers and protection officers all along the routes followed by the convoys. These measures should also assist UNAMIR, whose mandate was adjusted by Security Council resolution 1029 (1995) of 12 December 1995 so that it would:

(a) Exercise its good offices to assist in achieving the voluntary and safe repatriation of Rwandan refugees within the frame of reference of the recommendations of the Bujumbura Conference and the Cairo Summit of the Heads of State of the Great Lakes Region, and in promoting genuine national reconciliation,

(b) Assist the Government of Rwanda in facilitating the voluntary and safe return of refugees and, to this end, support the Government of Rwanda in its ongoing efforts to promote a climate of confidence and trust through the performance of monitoring tasks,

(c) Assist the United Nations High Commissioner for Refugees and other international agencies in the provision of logistical support for the repatriation of refugees.

139. All the problems which have been identified and examined in this report require urgent solutions as well as support measures. The following recommendations would be appropriate in this respect.

IV. RECOMMENDATIONS

140. The Special Rapporteur's recommendations deal essentially with the problems which give rise to the greatest concern and which require urgent responses by the Rwandan Government and the international community. They concern assistance for victims of genocide and other crimes belonging to vulnerable groups; the "rehabilitation" of the Rwandan judicial and prison system; the opening of trials at the International Tribunal for Rwanda and the cooperation of States; the punishment of current human rights violations; and the strengthening of reception, resettlement and security facilities for returnees.

A. Assistance for victims of genocide

141. As recommended in the third report (E/CN.4/1995/70, para. 81), the United Nations should establish an appropriate legal framework to ensure the protection of widows, women raped during the genocide, orphans and unaccompanied children and to guarantee their fundamental rights. For this purpose, it would be appropriate to provide compensation for victims through a special fund set up to that effect.

142. The United Nations should:

(a) Provide more substantial assistance to the Rwandan Government to help with its programmes for the social and psychological rehabilitation of the above-mentioned vulnerable groups of people, by supplying the equipment, funds and expertise required for the effective implementation of such programmes;

(b) Recommend that the Rwandan Government take appropriate measures, in particular discriminating in favour of women, children and Twas, in order to ensure their social reintegration and their well-being, subject to the principle of the equality of all citizens before the law.

B. Prosecution of persons suspected of genocide

143. The United Nations should:

(a) In cooperation with other organizations concerned, increase its assistance to the Rwandan Government with a view to restarting the judicial system, in particular through provision of more training for local personnel, for the establishment of a national Bar, for the reconstruction of courts and tribunals and the renovation of prisons and other detention centres;

(b) Increase the budget of the International Tribunal in order to provide it with the necessary human and material means to fulfil its mission as effectively as possible;

(c) Remind States, in accordance with Security Council resolution 978 (1995) of 27 February 1995, of the need to cooperate with the International Tribunal for Rwanda in order to ensure that genocide and other crimes against humanity are punished.

C. Cessation of human rights violations

144. The United Nations should:

(a) As recommended in the previous report (E/CN.4/1996/7, para. 139), demand that the Rwandan authorities take appropriate steps to ensure:

(i) Observance of the forms and procedures laid down by national legislation, and the international rules governing the arrest and detention of suspected criminals;

(ii) Observance of freedom of expression, which is essential for the establishment of democracy and the rule of law;

(iii) Punishment of all human rights violations as a means of breaking with the tradition of impunity;

(b) Substantially increase its assistance to the Rwandan Government in order to enable it as soon as possible to implement its programme for the development of sites to receive returnees and to alleviate if not eliminate the recurring problem of housing and land conflicts arising from illegal occupations of properties;

(c) Provide appropriate and adequate funding for the Human Rights Field Operation with a view to:

(i) Ensuring that it survives and that its current work is carried out effectively and rationally;

(ii) Increasing the number of observers, as recommended in the previous report, from 147 (the figure initially planned but never achieved) to 300, in order to enable them, simultaneously and satisfactorily, to ensure the supervision, reception and repatriation of refugees, especially in the event of a mass return.

D. Repatriation and resettlement of refugees

145. The United Nations should recommend:

(a) That the Rwandan Government and the Governments of countries of asylum apply in good faith the commitments undertaken at the various conferences dealing with voluntary repatriation. Steps should be taken in that respect to separate politicians from other refugees;

(b) That the Rwandan Government, as recommended in the previous report, continue to conduct and intensify campaigns to inform the population, in order to avoid the perpetration of reprisals against returnees. Appropriate administrative measures accompanied by effective sanctions should be adopted in that respect;

(c) That the international community provide more substantial assistance to the Rwandan Government to:

(i) Expand reception facilities in transit centres in order to ensure that refugee repatriation operations are carried out under the most favourable conditions;

(ii) Revitalize the educational infrastructure through the input of more human and material resources. Special assistance should be allocated to re-establishing the National University of Rwanda, and especially its law faculty, in order to train new lawyers to strengthen the existing judicial personnel;

(d) That Member States effectively make available to the Rwandan Government all funds promised at the Geneva Round Table Conference and provide further assistance, to enable it to implement programmes for the rehabilitation of economic and social infrastructures.

E. Settlement of the problems of the Great Lakes Region

146. As recommended in the previous report (para. 148), the United Nations should, by means of an integrated approach to the problem of the Great Lakes Region:

(a) Adopt a comprehensive strategy designed to prevent the disintegration of the subregion;

(b) Convene, by agreement with the Organization of African Unity and the permanent members of the Security Council, an international conference to resolve the problems of the subregion, in view of their related, interdependent and transboundary nature, with a view to establishing a permanent peace.